

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARL HEWITT,

Plaintiff,

v.

**BS TRANSPORTATION OF ILLINOIS,
LLC,
SUNOCO, INC.,
SUNOCO (R&M), LLC,
MARK FREDERICK, and
BRUCE SCHUNKE,
Defendants.**

CIVIL ACTION

NO. 18-712

ORDER

AND NOW, this 10th day of January, 2019, upon consideration of Motion To Dismiss Plaintiff's Second Amended Complaint of Defendant BS Transportation of Illinois, LLC and Bruce Schunke (Document No. 24, filed August 31, 2018), and Defendants Sunoco, Inc., Sunoco (R&M), LLC, and Mark Frederick's Motion To Dismiss the Second Amended Complaint (Document No. 25, filed September 6, 2018) and the related filings of the parties, for the reasons stated in the Memorandum dated January 10, 2019, **IT IS ORDERED** as follows:

1. The Motion to Dismiss filed by defendants Sunoco, Inc., Sunoco (R&M), LLC, and Mark Frederick's is **GRANTED**, and the claims against those defendants are **DISMISSED WITH PREJUDICE**.
2. The Motion to Dismiss filed by defendants BS Transportation of Illinois, LLC and Bruce Schunke is **GRANTED IN PART AND DENIED IN PART**, as follows:
 - a. That part of the motion which seeks dismissal of plaintiff's sex discrimination claim under Title VII of the Civil Rights Act of 1964 ("Title VII") in Count I of

the Second Amended Complaint¹ against defendant BS Transportation is **DENIED**.

- b. That part of the motion which seeks dismissal of plaintiff's retaliation claim under Title VII in Count I of the Second Amended Complaint against defendant BS Transportation is **GRANTED**, and this claim is **DISMISSED WITHOUT PREJUDICE**. Plaintiff may refile his retaliation claim after exhausting his administrative remedies provided that such exhaustion is not time-barred.
- c. That part of the motion which seeks dismissal of plaintiff's claims of race, color, and national origin discrimination under Title VII in Count II of the Second Amended Complaint against defendant BS Transportation is **GRANTED**, and these claims are **DISMISSED WITH PREJUDICE**.
- d. That part of the motion which seeks dismissal of plaintiff's sex discrimination claim under the Pennsylvania Human Relations Act ("PHRA") in Count III of the Second Amended Complaint against defendant BS Transportation is **DENIED**.
- e. That part of the motion which seeks dismissal of plaintiff's retaliation claim under the PHRA in Count IV of the Second Amended Complaint against defendant BS Transportation is **GRANTED**, and this claim is **DISMISSED WITHOUT PREJUDICE**. Plaintiff may refile his retaliation claim after exhausting his administrative remedies provided that such exhaustion is not time-barred.
- f. That part of the motion which seeks dismissal of plaintiff's aiding and abetting claim in Count V of the Second Amended Complaint against defendant BS

¹ Plaintiff's current complaint (Document No. 23, filed August 3, 2018) is titled "Amended Complaint." In the interest of clarity, the Court refers to this complaint as the Second Amended Complaint.

Transportation is **GRANTED**, and this claim is **DISMISSED WITH PREJUDICE**.

- g. That part of the motion which seeks dismissal of plaintiff's aiding and abetting claim in Count V of the Second Amended Complaint against defendant Bruce Schunke is **DENIED**.

IT IS FURTHER ORDERED that a preliminary pretrial telephone conference in chambers will be scheduled in due course.

BY THE COURT:

/s/ **Hon. Jan E. DuBois**

DuBOIS, JAN E., J.